



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DOUGLAS CRESCENT APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes cnl, opl, ff

Introduction

The tenants in units #3 and #2 of the subject apartment complex have applied for resolution of a dispute in the tenancy at the above noted address, both requesting an order to cancel a Notice to End Tenancy, given for landlord use of property. On March 5, 2015, a designate of the Director ordered that these proceedings be joined.

The landlord seeks an Order of Possession for each of these tenancies.

Issue(s) to be decided

Should the Notice to End Tenancy for the units be cancelled, and the tenancies continue, OR are the Notices effective to end the tenancy, and the landlord entitled to an Order of Possession for each unit.

Background and Evidence

The tenancy in unit #3 began approximately 6 years ago, while the tenancy in unit #2 began over 15 years ago. These units are in the middle floor of a three level, six unit apartment building originally constructed in 1927. On February 18, 2015, the landlord sent by registered mail a 2 month Notice to End Tenancy for Landlord's Use of Property to each of the tenants, on the grounds that the landlord had all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant. The tenant in unit #3 received the Notice on February 23, 2015, and the tenant in unit #2 received the Notice on March 2, 2015. The disputes of the Notices were both filed within the requisite 15 day period.

The tenants submit that:

- The renovations are not necessary, and are cosmetic in nature only;
- The tenants are happy with the accommodations in their present form;
- The landlord is renovating so as to be able to charge higher rents;

- The tenants are willing to reside in the units while the renovations proceed, or alternatively to relocate temporarily to empty units while the renovations are carried out;
- The landlord has not obtained advice from an electrical contractor with expertise in heritage sites, who could show that much simpler renovations could occur to this building.

The landlord submits that:

- No major renovations have ever occurred to his building, and all major systems are in dire need of upgrade;
- The building's insurance broker has advised the landlord of the need for upgrades to meet insurance policy qualifications. The insurer has mandated an electrical upgrade of the entire building, due to fire and safety concerns;
- The landlord's obligations under section 32 of the Residential Tenancy Act to provide and maintain the property in a state of decoration and repair that complies with health, safety and housing standards required by law has been triggered;
- Both the building and electrical arms of the City of Vancouver require upgrades to the old knob and tube electrical service currently in place;
- The plumbing system to the building has never been upgraded. When inspections were done one small section of pipe alone was found to have 15 pin holes in it. The old boiler was no longer functioning properly;
- The building had no security access system in place;
- The building had insufficient insulation to the walls, and needed insulation to the floors to reduce sound transfer;
- The great number of holes opened in walls to accommodate all of the upgrades, as well as a sound proofing upgrade required that drywall be placed over top the existing lath and plaster walls;
- All aspects of the kitchen and bathrooms will be replaced, requiring the removal of all fixtures and walls down to the studs;
- New subfloors and flooring will replace the old, squeaky floors;
- 90% of each unit will be brand new once renovated, and the cost will be about \$100,000 to each unit;
- The renovations have begun to the top floor, and must now proceed to the middle floor, and then the lower floor. Vacant possession to the middle floor units is needed in order to proceed, as is confirmed by the electrical contractor and general contractor;
- This is not an issue of merely wanting to raise rent. Vacant possession is required to meet safety, liability and insurability requirements;

- All permits and approvals necessary were obtained in advance of serving the tenants the subject Notices ending their tenancies;
- While the general contractor had requested vacant possession of the entire building at the commencement of renovations, the tenants have been accommodated as long as possible. This has been problematic as the tenants have been uncooperative, obstructive, verbally abusive, have interfered with renovation work, and have harassed workers;
- A landlord has the right under the Residential Tenancy Act to make extensive renovations to his property and obtain vacant possession for that purpose .

Analysis

Notwithstanding a long standing tenancy, as set out in the Residential Tenancy Act landlords retain a general right to end the tenancy for landlord use of the property. In this case the Notices themselves are in the correct form and are properly prepared. The necessary permits were obtained prior to the Notices being given to the tenants. On their face therefore, the Notices are effective to end the tenancy.

I reject the tenants' contention that the subject renovations are cosmetic in nature only. It is hard to imagine a much more comprehensive renovation project to the interior of a dwelling. Unquestionably the renovations will require vacant possession, as there will be periods without power, water, a kitchen, and a washroom. Clearly the presence of the tenants and their possessions in the premises would unreasonably interfere with portions of the work such as the removal and replacing of the electrical and plumbing systems, the flooring, the installing of insulation, and the application of drywall to all walls. In my view, were possession to be permitted to the tenants in this type of major renovation, the right of the landlord under the Residential Tenancy Act to obtain vacant possession would be usurped, and would render meaningless the landlord's right to end a tenancy under section 49(6)(b) of the Residential Tenancy Act.

Although the words "in good faith" do not appear on the Notices ending the tenancies, section 49(6)(b) of the Residential Tenancy Act specifically uses these words, and allows the landlord to end a tenancy agreement only if the landlord intends, in good faith, to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Policy Guideline #2 specifically addresses the issue of "good faith". A landlord may intend to renovate the premises as stated on the notice to end, but that intention may be motivated by dishonest or undisclosed purposes. For example, if the primary motive for the landlord ending the tenancy is to retaliate against the tenant, then the landlord does

not have a “good faith” intent. Similarly, if the landlord is attempting to avoid his legal responsibilities as a landlord, or is attempting to obtain an unconscionable or undue advantage by ending the tenancy, the intent of the landlord to renovate may not be a “good faith” intent. If the sole purpose of the landlord is to gain higher rent for the premises, and the premises themselves were not being upgraded to any significant extent, a good faith intention would not be established.

There are several factors I consider in this regard. The landlord has expended money and time in obtaining quotes for contractors and obtaining necessary permits. Clearly the scope of work to the building is significant, and will result in safer units with a much great appeal and function to the occupants. The amount of money already expended by the landlord (\$250,000) is significant, and suggestive that the improvements will be significant. There is clear evidence that an electrical upgrade was required. The tenants have not demonstrated that the landlord’s primary purpose is just to remove them from the premises, and attract new, higher paying tenants. Rather, the landlord has an obligation to upgrade the building’s electrical and it is logical that other upgrades occur at the same time. All of these factors demonstrate that there is no absence of a good will intention of the landlord.

In summary, both Notices are found valid and effective to end these tenancies. The claims of both tenants are therefore dismissed. Given that the tenants are unsuccessful in their claims, and also given the tenants’ obstructionism as towards the workers on site, I decline to award recovery of the tenants’ filing fees.

I turn to consider the claim of the landlord for an Order of Possession. Given that the Notices were received at different times, this issue must be addressed differently for each unit.

In unit # 3, the 2 month Notice was received by the tenant on February 23, 2015. This Notice is therefore effective to end the tenancy April 30, 2015, and an Order of Possession is issued effective that date.

In unit #2, the 2 month Notice was received by the tenant on March 2, 2015. As the rent is due on the first day of each month and as the Notice must span two full monthly rental periods, this Notice is therefore effective to end the tenancy May 30, 2015, and an Order of Possession is issued effective that date.

Finally as the landlord is successful, the landlord may recover their \$50.00 filing fee from the tenant in unit #3, and their \$25.00 filing fee from the tenant in unit #2. Should

the tenants fail to pay these sums to the landlord, the landlord may retain these sums from the respective security deposits.

Conclusion

The tenants' claims are dismissed. The tenancy in unit #3 shall end April 30, 2015. The tenancy in unit #2 shall end May 30, 2015. Pursuant to Section 55 of the Residential Tenancy Act, I issue an Order of Possession to the landlord for each of these two units, along with an order that the landlord recover their filing fees. The landlord shall serve the Orders upon the tenants. Should either tenant fail to vacate as ordered, the landlord may register the relevant Order with the Supreme Court for enforcement.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 08, 2015

Residential Tenancy Branch

